IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-56

DR. ROBERT O. NARA, D.D.S.

Petitioner,

v.

MICHIGAN STATE BOARD OF DENTISTRY

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES AND CASES CITED	ii
OPINION BELOW	1
STATEMENT OF JURISDICTION	1
QUESTIONS PRESENTED FOR REVIEW	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF CASE	3
ARGUMENT	
I. THE DISCIPLINARY PROCEEDINGS HELD BEFORE THE MICHIGAN STATE BOARD OF DENTISTRY, WHICH WERE CONDUCTED PURSUANT TO THE PROVISIONS OF THE DENTISTRY ACT AND THE ADMINISTRATIVE PROCEDURES ACT OF 1969, DID NOT DENY PETITIONER DUE PROCESS OF LAW	5
II. THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION DOES NOT PROVIDE PROTECTION TO ADVERTISEMENTS WHICH ARE DECEPTIVE AND MISLEADING	8
III. THE RECORD DOES NOT SUPPORT PETITIONER'S CONTENTION THAT THE MEMBERS OF THE STATE BOARD OF DENTISTRY SHOULD HAVE DISQUALIFIED THEMSELVES FROM PARTICIPATION IN THE INSTANT MATTER	11
CONCLUSION	14
STATUTORY APPENDIX	

INDEX OF AUTHORITIES AND CASES CITED

STATUTES

Page

1939 PA 122, as amended; MCLA 338.201 *et seq;* MSA 14.629(1) *et seq. (Michigan Dentistry Act)* 3, 5

§ 8 9

§ 17 .....6, 7, 8, 9

§ 18 .....3, 4, 6

§ 19 4

1969 PA 306, as amended; MCLA 24.201 *et seq;* MSA 3.560(101) *et seq. (Michigan Administrative Procedures Act)* 3, 4, 5, 7

§ 92 4

CONSTITUTIONS

US Const, Am I 8, 9, 10

OTHER

28 USCA 1257 1

Michigan Administrative Code, 1970-1971 Annual Administrative Code Supplement, Rule 338.213 ..... 3, 7

CASES

Bates v Arizona State Bar
433 US 350; 97 S Ct 2691; 53 L Ed 2d 810 (1977) 9

Berger v United States
255 US 22; 41 S Ct 230; 65 L Ed 431 (1921) 6

Gibson v Berryhill
411 US 564; 93 S Ct 1689; 36 L Ed 2d 488 (1973) ..11, 12, 14

Page

Humphrey v United States
295 US 602; 55 S Ct 869; 97 L Ed 1611 (1935) 6

In re Merchison
349 US 133; 75 S Ct 623; 99 L Ed 2d 942 (1955) ...6, 11, 12

Mayberry v Pennsylvania
400 US 455; 91 S Ct 499; 27 L Ed 2d 532 (1971) 6

Semler v Oregon State Board of Dental Examiners
294 US 608; 55 S Ct 570; 79 L Ed 2d 1086 (1935) 5

Tumey v Ohio
273 US 510; 57 S Ct 437; 71 L Ed 749 (1927) 6, 12, 14

Virginia Pharmacy Board v Virginia Citizens Council
425 US 748; 96 S Ct 1817; 48 L Ed 2d 346 (1976) 10

Withrow v Larkin
421 US 35; 95 S Ct 1456; 43 L Ed 2d 712 (1975) 6

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RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The final orders of the Michigan State Board of Dentistry, and orders entered by the Michigan Court of Appeals and Michigan Supreme Court, are set forth by Petitioner.

STATEMENT OF JURISDICTION

The order of the Michigan Supreme Court was entered on February 6, 1979. A timely petition for rehearing was denied by the Michigan Supreme Court on April 19, 1979. This Court's jurisdiction is invoked under 28 USCA 1257.

QUESTIONS PRESENTED FOR REVIEW

I

WHETHER DISCIPLINARY PROCEEDINGS HELD BEFORE THE MICHIGAN STATE BOARD OF DENTISTRY, WHICH WERE CONDUCTED PURSUANT TO THE PROVISIONS OF THE DENTISTRY ACT AND THE ADMINISTRATIVE PROCEDURES ACT OF 1969, DENIED PETITIONER DUE PROCESS OF LAW.

II

DOES THE FIRST AMENDMENT TO THE U.S. CONSTITUTION PROHIBIT THE MICHIGAN STATE BOARD OF DENTISTRY FROM INSTITUTING DISCIPLINARY PROCEEDINGS AGAINST ADVERTISEMENTS WHICH ARE ALLEGED TO BE DECEPTIVE AND MISLEADING?

III

DOES THE RECORD SUPPORT PETITIONER'S CONTENTION THAT THE MICHIGAN STATE BOARD OF DENTISTRY WAS NOT AN IMPARTIAL TRIBUNAL BECAUSE SOME OF ITS MEMBERS ARE ALSO MEMBERS OF THE MICHIGAN DENTAL ASSOCIATION AND THE AMERICAN DENTAL ASSOCIATION?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions are adequately set forth in the petition. This case also involves the following statutes and administrative rules, the text of which appears in the attached statutory appendix:

Michigan Dentistry Act:
1939 PA 122 as amended; MCLA 338.201 et seq; MSA 14.629(1) et seq.

Michigan Administrative Procedures Act of 1969:
1969 PA 306 as amended; MCLA 24.201 et seq; MSA 3.560(101) et seq.

Michigan Administrative Code, 1970-71 Annual Administrative Code Supplement, Rule 338.213.

STATEMENT OF CASE

On November 18, 1976 the State Board of Dentistry, hereinafter Respondent, filed a complaint against Robert O. Nara, D.D.S., hereinafter Petitioner, for violating section 18(e) of the Dentistry Act, 1939 PA 122, as amended; MCLA 338.201 *et seq;* MSA 14.629(1) *et seq.* The complaint alleged that Petitioner used a person not licensed by Respondent to perform an oral prophylaxis upon dental patients. An oral prophylaxis is a procedure which removes stains and accretions from the human tooth. The provisions of the Dentistry Act, *supra,* require that persons performing such procedure must be licensed by Respondent as a dentist or a dental hygienist.

On January 21, 1977 Respondent filed a second complaint against Petitioner, charging a violation of section 18(m)(r) of the Dentistry Act, *supra.* The complaint is based upon the following advertisement placed in the Houghton-Hancock Michigan Bell Telephone Directory:

"NARA ROBERT O
Specializing in Oramedics—For People With Teeth Who Want To Keep Them
200 E. Montezuma Houghton .....482-3530"

A hearing was scheduled for July 26, 1977. It was determined at the proceedings that an informal compliance conference[1], which is required prior to the institution of formal proceedings, was not conducted. The hearings officer adjourned the formal hearing in order that a compliance conference could be conducted. Following the informal compliance conference, the formal hearing was held on September 27, 1977. The hearings officer submitted his findings of fact and conclusions of law to Respondent on January 6, 1978. Subsequently, on February 6, 1978, Respondent issued two final orders. The first order provided that Petitioner violated section 18(m)(r) of the Dentistry Act, *supra*, and suspended his license for one year effective May 15, 1978. The second order issued by Respondent provided that Petitioner violated section 18(e) of the Dentistry Act, *supra*, and suspended Petitioner's license for ninety days effective September 15, 1978 and placed his license on probation for two years.

Pursuant to section 19(4) of the Dentistry Act, *supra*, Petitioner sought an appeal of the final orders issued by Respondent. Petitioner filed an appeal with the Michigan Court of Appeals, which was denied on April 17, 1978. Petitioner then filed an application for leave to appeal to the Michigan Supreme Court. On February 6, 1979 the Michigan Supreme Court denied Petitioner's application for leave to appeal. Subsequently, Petitioner filed an application for rehearing in the Michigan Supreme Court, which was denied on April 19, 1979.

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[1] Section 92 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCLA 24.201 *et seq;* MSA 3.560(101) *et seq*, requires that prior to a formal hearing, the petitioner be provided "an opportunity to show compliance" (informal compliance conference).

ARGUMENT

I

THE DISCIPLINARY PROCEEDINGS HELD BEFORE THE MICHIGAN STATE BOARD OF DENTISTRY, WHICH WERE CONDUCTED PURSUANT TO THE PROVISIONS OF THE DENTISTRY ACT AND THE ADMINISTRATIVE PROCEDURES ACT OF 1969, DID NOT DENY PETITIONER DUE PROCESS OF LAW.

Petitioner makes many spurious allegations in support of his contention that he was denied due process of law in the disciplinary proceedings but Respondent submits that the record refutes such allegations and shows them to be without merit. The proceedings conducted in the instant matter were held pursuant to the provisions of the Dentistry Act, *supra*, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCLA 24.201 *et seq;* MSA 3.560(101) *et seq*, which provide the constitutional guarantees Petitioner claims he was denied.

The State of Michigan has plenary powers to regulate various healing arts, including dentistry. This power includes the right to require practitioners of these arts to obtain licenses as a condition of engaging in practice. In *Semler* v *Oregon State Board of Dental Examiners*, 294 US 608, 611; 55 S Ct 570; 79 L Ed 1086, 1089 (1935), this Court held that a State may, consistent with the requirements of due process, regulate the practice of dentistry:

> "That the State may regulate the practice of dentistry, prescribing the qualifications that are reasonably necessary, and to that end may require licenses and establish supervision by an administrative board, is not open to dispute. Douglas v. Noble, 261 U. S. 165, 67 L. ed. 590,

43 S. Ct. 303; Graves v. Minnesota, 272 U. S. 425, 427, 71 L. ed. 331, 334, 47 S. Ct. 122. . . ."

A fair trial in a fair tribunal is a basic requirement of due process. *In re Merchison,* 349 US 133, 136; 75 S Ct 623; 99 L Ed 2d 942 (1955). Included within this basic requirement, the tribunal should be disinterested to the extent that it is free of any form of bias or predisposition regarding the outcome of the case. *Berger* v *United States,* 255 US 22; 41 S Ct 230; 65 L Ed 431 (1921); *Tumey* v *Ohio,* 273 US 510; 57 S Ct 437; 71 L Ed 749 (1927); *Mayberry* v *Pennsylvania,* 400 US 455; 91 S Ct 499; 27 L Ed 2d 532 (1971). Respondent, as any administrative agency exercising quasi-judicial authority, must act with impartiality. *Humphrey* v *United States,* 295 US 602; 55 S Ct 869; 97 L Ed 1611 (1935). *Withrow* v *Larkin,* 421 US 35; 95 S Ct 1456; 43 L Ed 2d 712 (1975).

Respondent is vested with the authority to regulate the practice of dentistry and to institute disciplinary proceedings against individuals licensed by Respondent for violation of the standard of conduct set forth in the Dentistry Act, *supra.* In the instant case, two complaints were filed against Petitioner. The first complaint alleged that Petitioner violated section 18(e) of the Dentistry Act, *supra,* as he allowed an individual not licensed by Respondent to perform an oral prophylaxis. The provisions of the Dentistry Act, *supra,* require that individuals performing an oral prophylaxis must be licensed by Respondent as a dentist or a dental hygienist. The second complaint charged that Petitioner violated section 18(m)(r) of the Dentistry Act, *supra,* which prohibits a dentist from making statements which tend to mislead or deceive the public, as set forth in section 17 of the Dentistry Act, *supra,* and prohibits a dentist from holding himself out as a specialist unless he is licensed by Respondent.

The hearing held on September 27, 1977 was conducted pursuant to the provisions of the Administrative Procedures Act of 1969, *supra.* The act provides Petitioner with the constitutional protections which he contends have been denied to him. Sections 71 through 87 of the Administrative Procedures Act of 1969, *supra,* set forth the procedure by which the administrative hearing in the instant matter was conducted. The procedure guarantees the Petitioner reasonable notice of the hearing, which includes in part a statement of the charges brought against him. Further, it provides Petitioner with an opportunity to present evidence at the hearing. In addition, it requires that the final order issued by Respondent be supported by competent, material and substantial evidence. The instant case clearly reveals that the record of the proceedings conducted before Respondent comported with the hearing provisions within the Administrative Procedures Act of 1969, *supra,* and Petitioner was not denied due process of law.

At the hearing, evidence was presented to support the allegation that Petitioner allowed an unlicensed person to perform dental procedures which could only be performed by an individual licensed by Respondent. Deborah Marshall Kilmer, an employee of Petitioner from August 1975 through October 1975, testified that Petitioner allowed her to perform prophylaxis and scaling upon the teeth of the patients of Petitioner. The prophylaxis consisted of polishing patients' teeth with polishing paste and a rubber cup by use of a motorized instrument. Further, she testified that she used various dental instruments to scrape tartar off patients' teeth.

Evidence was also presented which established that the advertisement placed by Petitioner in the Michigan Bell Telephone Directory for the Houghton-Hancock area was misleading and deceptive, contrary to section 17 of the Dentistry Act, *supra.* Further, the advertisement was contrary to section 8 of the Dentistry Act, *supra,* as Petitioner announced and held himself out to the public as being specially qualified in a

given area of dentistry without having obtained a license from Respondent.

It should be noted in the instant case that Petitioner did not submit evidence at the hearing refuting the allegations. Petitioner in the instant matter chose to walk out of the hearing and, by doing so, failed to cross-examine any witnesses and further did not present any evidence to refute the allegations [Tr 9-27-77, pp 8-15, 30-32]. There is no evidence in the record to refute the charges regarding Petitioner's unlawful use of unlicensed personnel in his practice. Further, there is no evidence supporting Petitioner's claim that the advertisement was not deceptive and misleading.

Respondent contends that the record of the instant case demonstrates that Petitioner was not denied due process of law.

II

THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION DOES NOT PROVIDE PROTECTION TO ADVERTISEMENTS WHICH ARE DECEPTIVE AND MISLEADING.

Section 17 of the Dentistry Act, *supra,* defines unlawful advertising practices by dentists. Specifically, section 17 provides in part as follows:

> "Excepting as in this act provided, it is unlawful for dentists to:
>
> "(1) Make use of any advertising statements of a character tending to mislead or deceive the public."

Section 8 of the Dentistry Act, *supra,* prohibits a dentist from advertising that he is a specialist unless licensed by Respondent. Section 8 provides in part:

> "No dentist shall announce or hold himself out to the public as limiting his practice to, or as being especially qualified in, or as giving special attention to, any branch of dentistry, without first having obtained a license therefor from the board as hereinafter provided. . . ."

The complaint filed by Respondent alleged that Petitioner violated sections 8 and 17 of the Dentistry Act, *supra,* thereby entitling Respondent to take disciplinary action against Petitioner pursuant to section 18(m)(r). Petitioner claims that the provisions of the Dentistry Act, *supra,* violate the First Amendment to the United States Constitution, US Const, Am I. Respondent submits that Petitioner's advertising is misleading and deceptive and, therefore, not protected by the First Amendment.

The United States Supreme Court in *Bates* v *Arizona State Bar,* 433 US 350; 97 S Ct 2691; 53 L Ed 2d 810, 835 (1977), recently addressed blanket advertising restrictions by attorneys. The Court found the advertisement published by attorneys to be within the protection of the First Amendment to the United States Constitution, and concluded as follows:

> "In holding that advertising by attorneys may not be subjected to blanket suppression, and that the advertisement at issue is protected, we, of course, do not hold that advertising by attorneys may not be regulated in any way. We mention some of the clearly permissible limitations on advertising not foreclosed by our holding.
>
> "Advertising that is false, deceptive, or misleading of course is subject to restraint. See Virginia Pharmacy

> Board v Virginia Citizens Council, 425 US, at 771-772, and n 24, 48 L Ed 2d 346, 96 S Ct 1817. Since the advertiser knows his product and has a commercial interest in its dissemination, we have little worry that regulation to assure truthfulness will discourage protected speech. . . ."

The Court stated that advertising which is false, deceptive or misleading is subject to valid restraints. See *Virginia Pharmacy Board* v *Virginia Citizens Council*, 425 US 748; 96 S Ct 1817; 48 L Ed 2d 346 (1976).

Respondent contends the advertising in the instant case is misleading and, therefore, not protected by the First Amendment to the United States Constitution. Petitioner advertised that he was specializing in oramedics. The Dentistry Act, *supra*, provides that a dentist may advertise and, if the dentist has a specialty license issued by Respondent, he may advertise the particular specialty. "Oramedics" is not a specialty recognized by Respondent. Members of the public rely on dentists who hold themselves out as specialists as having qualifications beyond those of the general practitioner. Petitioner's advertising of a specialty deceives members of the public as to his qualifications. The fact that oramedics is not a specialty is undisputed on the record. Further, the testimony of Dr. Thomas Vuchetich reveals that the term "oramedics" has no meaning within the dental profession [Tr 9-27-77, pp 27-30].

Petitioner's advertising that he is a specialist in an area not recognized by Respondent is misleading and deceptive and not within the protection of the First Amendment to the United States Constitution.

III

THE RECORD DOES NOT SUPPORT PETITIONER'S CONTENTION THAT THE MEMBERS OF THE STATE BOARD OF DENTISTRY SHOULD HAVE DISQUALIFIED THEMSELVES FROM PARTICIPATION IN THE INSTANT MATTER.

Petitioner contends that Respondent is not the proper body to decide disciplinary action. Petitioner argues that Respondent has preconceived ideas as to his guilt or innocence because several individuals on Respondent Board are members of the Michigan Dental Association[2] and the American Dental Association[3]. Petitioner's assertions are based upon litigation instituted by the Federal Trade Commission against the American Dental Association, regarding the Association's code of professional advertising. It is therefore contended by Petitioner that the members of Respondent who belong to the American Dental Association should be disqualified. Respondent submits that Petitioner's claims are without merit and not supported by the record. The record in the instant case contains no evidence supporting Petitioner's claims as Petitioner walked out of the hearing held on September 27, 1977, and failed to present evidence supporting his assertions.

It is beyond dispute that a "fair trial in a fair tribunal" is a basic requirement of due process. *In re Merchison, supra.* This requirement applies to administrative agencies which adjudicate, as well as to courts. *Gibson* v *Berryhill*, 411 US

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[2]

The Michigan Dental Association is a voluntary professional association of dentists in Michigan, and a component of the American Dental Association.

[3]

The American Dental Association is a voluntary professional association of dentists.

564; 93 S Ct 1689; 36 L Ed 2d 488 (1973). Not only is a biased decisionmaker constitutionally unacceptable, but "our system of law has always endeavored to prevent even the probability of unfairness." *In re Merchison, supra;* cf *Tumey* v *Ohio, supra.*

The United States Supreme Court in *Tumey* v *Ohio, supra,* and *Gibson* v *Berryhill, supra,* considered the disqualification of the decisionmaker. In *Tumey* v *Ohio, supra,* the Court held that the village mayor could not sit as a judge on the "liquor court" where he was directly compensated out of fines collected for violations of the state prohibition act. The Court stated as follows:

> ". . . it certainly violates the 14th Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case." 273 US 510, 523

In *Gibson* v *Berryhill, supra,* the Court considered whether the State Board of Optometry, composed of members of an optometric association which excluded salaried optometrists employed by other persons or corporations, had a pecuniary interest in the outcome of proceedings instituted against optometrists for unethical conduct in practicing as employees of a business organization. The record of the lower court proceeding revealed that half of the optometrists practicing in the state were salaried employees of business corporations. If the effort to revoke the license of salaried optometrists succeeded, optometrists engaged in private practice would realize a benefit. The Court stated:

> "Secondly, the District Court determined that the aim of the Board was to revoke the licenses of all optometrists

> in the State who were employed by business corporations such as Lee, and that these optometrists accounted for nearly half of all the optometrists practicing in Alabama. Because the Board of Optometry was composed solely of optometrists in private practice for their own account, the District Court concluded that success in the Board's efforts would possibly rebound to the personal benefit of members of the Board, sufficiently so that in the opinion of the District Court the Board was constitutionally disqualified from hearing the charges filed against the appellees.
>
> "• • •
>
> "It is sufficiently clear from our cases that those with substantial pecuniary interest in legal proceedings should not adjudicate these disputes. Tumey v Ohio, 273 US 510, 71 L Ed 749, 47 S Ct 437, 50 ALR 1243 (1927). And Ward v Village of Monroeville, 409 US 57, 34 L Ed 2d 267, 93 S Ct 80 (1972), indicates that the financial stake need not be as direct or positive as it appeared to be in Tumey. It has also come to be the prevailing view that '[m]ost of the law concerning disqualification because of interest applies with equal force to . . . administrative adjudicators.' K. Davis, Administrative Law Text § 12.04, p 250 (1972), and cases cited. The District Court proceeded on this basis and, applying the standards taken from our cases, concluded that the pecuniary interest of the members of the Board of Optometry had sufficient substance to disqualify them, given the context in which this case arose. As remote as we are from the local realities underlying this case and it being very likely that the District Court has a firmer grasp of the facts and of their significance to the issues presented, we have no good reason on this record to overturn its conclusion and we affirm it." 36 L Ed 2d 488, 500

The record created in this matter fails to disclose the direct interest of the members of Respondent as was present in *Tumey* v *Ohio, supra,* and *Gibson* v *Berryhill, supra.*

CONCLUSION

Petitioner's license to practice dentistry was suspended by Respondent based on evidence presented that he allowed an unlicensed person to perform dental procedures upon patients which could only be performed by persons licensed by Respondent. Further, Petitioner's license was also suspended upon evidence presented at the hearing that his advertisement was deceptive and misleading. There is no evidence on the record before this Court which would support a contrary conclusion.

The advertisement that Petitioner "specialized in oramedics" is not protected by the First Amendment. The Dentistry Act, *supra,* prohibits a dentist from advertising that he is a specialist unless he has a specialty license issued by Respondent. The evidence at the hearing demonstrated that "oramedics" is not a specialty recognized by Respondent. Members of the public rely on dentists who hold themselves out as specialists as having superior qualifications in a specific area of dentistry. Thus, members of the public viewing the advertisement in question are deceived as to Petitioner's qualifications.

The hearing in this matter was conducted pursuant to the provisions of the Dentistry Act, *supra,* and the Administrative Procedures Act of 1969, *supra.* The procedures for conducting hearings set forth therein comport with due process principles. Petitioner was provided notice of charges and an opportunity for a hearing before a fair and impartial tribunal, at which he

could cross-examine Respondent's witnesses and present evidence supporting his position. The record fails to support Petitioner's claim that he was denied due process of law.

Respectfully submitted,

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STATUTORY APPENDIX

TABLE OF CONTENTS

Page

Michigan Dentistry Act (selected sections):
1939 PA 122 as amended; MCLA 338.201 et seq;
MSA 14.629(1) et seq 1a

Michigan Administrative Procedures Act of 1969
(selected sections):
1969 PA 306 as amended; MCLA 24.201 et seq;
MSA 3.560(101) et seq 6a

Michigan Administrative Code, 1970-1971 Annual
Administrative Code Supplement, Rule 338.213 .... 11a

Michigan Dentistry Act, 1939 PA 122, as amended; MCLA 338.201 et seq; MSA 14.629(1) et seq

MCLA 338.208

Sec. 8. No dentist shall announce or hold himself out to the public as limiting his practice to, or as being especially qualified in, or as giving special attention to, any branch of dentistry, without first having obtained a license therefor from the board as hereinafter provided. The board, upon satisfactory proof that the applicant has had a minimum of 1 year of post-graduate work in any one of the several recognized branches of dentistry in an approved college or university, or its equivalent, to be determined by the board, or has complied with any additional requirements of the board, may issue a license to such dentist authorizing such dentist to hold himself out, or to announce, to the public that he is especially qualified in, or limits his practice to, or gives special attention to, such recognized branch of the dental profession. Examinations shall be theoretical and practical. The theoretical examinations shall be in writing and include all the subjects represented in that recognized branch of dentistry in which the applicant desires to specialize. Written examinations may be supplemented by oral examinations. Demonstrations of the applicant's skill shall also be required. A special license shall be required for the practice of each recognized branch of dentistry in order for a dentist to hold himself out to the public as limiting his practice to, or being especially qualified in, or giving special attention to, any branch of dentistry. The fee for such examination and special license shall be $100.00. Any applicant who shall fail to pass an examination shall have the right to apply for a subsequent examination, in which case he shall pay to the secretary a fee of $25.00 for each subsequent examination: Provided, however, That said board may for a sufficient cause remit said fee for such subsequent re-examination.

MCLA 338.209

Sec. 9. The board may license dental hygienists. A candidate for examination as a dental hygienist shall pay to the secretary of the board a fee of $15.00 and furnish satisfactory proof that he is a graduate of an accredited high school in this state, or a school of like standing in another state or country, or has in earned units of study the equivalent necessary for graduation and has earned a diploma, or certificate, or the equivalent from a program approved by the board. The board may determine what constitutes an approved program, qualified to educate and train dental hygienists to perform the functions permitted under this act. An applicant who passes the examination shall be licensed as a dental hygienist. An applicant who fails an examination may apply for a subsequent examination upon paying to the secretary a fee of $10.00 for each subsequent examination. The board for sufficient cause may remit the fee for a subsequent reexamination. A licensed dental hygienist may remove accretion and stains including calcareous deposits from the teeth, perform deep scaling, root planing, polish restorations, place and remove surgical dressings, and perform additional functions and operations as the board prescribes by rule. A dental hygienist may operate in the office of a licensed dentist, in a state or municipal institution, in a public school, under a board of health, or in a public clinic authorized by the board, but shall not operate except under the direction of a licensed dentist. The board may revoke or suspend the license of a licensed dentist who permits a dental hygienist operating under his direction to perform any operation other than those permitted under this section or rules promulgated by the board. The board may revoke or suspend the license of a dental hygienist who performs any operation other than those permitted under this section or rules promulgated by the board.

MCLA 338.212(3) (6)

Sec. 12. A person practices dentistry, within the meaning of this act, when it is shown:

• • •

(3) That he performs dental operations of any kind gratuitously, or for a fee, gift, compensation, or reward, paid or to be paid to himself, to another person, or agency.

• • •

(6) That he offers and undertakes, by any means or method, to diagnose, treat, or remove stains or accretions from human teeth or jaws.

MCLA 338.217(1) (2) (3) (14)

Sec. 17. Excepting as in this act provided, it is unlawful for dentists to:

(1) Make use of any advertising statements of a character tending to mislead or deceive the public.

(2) Circulate any statement as to the skill or method of practicing dentistry of any dentist through any media, means, agencies or devices of an advertising nature.

(3) Advertise professional superiority or the performance of professional services in a superior manner.

• • •

(14) Give a public demonstration of skill or methods of practicing dentistry for the purpose of securing patronage. Any dentist may publicly announce by way of newspaper or professional card that he is engaged in the practice of dentistry, giving his name, degree, office location where

he is actually engaged in practice, office hours, telephone numbers and residence address, and, if he limits his practice to a specialty, he may state same.

MCLA 338.218(c) (m) (r)

Sec. 18. The board shall suspend for a limited period or revoke the license of a licensed dentist or licensed dental hygienist or the certificate of a dental assistant, for any of the following reasons:

• • •

(c) For habitually using drugs or intoxicants to the extent of rendering him unfit for the practice of dentistry, dental hygiene, or dental assisting or for gross immorality.

• • •

(m) For holding himself out as specially qualified in, or limiting his practice to, or giving special attention to, a branch of dentistry without a special license therefor.

• • •

(r) For violating or assisting in a violation of a provision of this act.

MCLA 338.219(1) (2) (4) (5)

Sec. 19. (1) An accusation against a licensee or certified dental assistant under section 18, except subdivision (a), shall be made in writing, verified by some person familiar with the facts therein stated and 3 copies thereof filed with the secretary of the board. If the board deems that the charges are sufficient, if true, to warrant suspension or revocation of license or certificate for dental assisting, it shall make an order fixing the time and place for a hearing and requiring the accused to appear and answer. The order together with a copy

of the charges shall be served upon the accused at least 30 days before the date fixed for hearing, either in person or by registered mail, sent to his last known post office address. At the time and place fixed in the notice or at any time and place to which the hearing is adjourned, the board shall hear the matter. The accused person shall have the right to be represented at the hearing by counsel.

(2) The president, vice-president, or secretary of the board may administer oaths to witnesses and issue subpoenas after a hearing in circuit court for the attendance of witnesses at the hearing. Upon the request of the accused person, or his counsel, the board shall issue subpoenas for the attendance of witnesses in behalf of the accused. When issued, the subpoenas shall be delivered to the accused person, or his counsel. Process for the attendance of witnesses shall be effective if served upon the person named therein anywhere within this state. At the time of service the fees provided by law for witnesses in civil cases in circuit court shall be paid or tendered to the person. In case of disobedience of a subpoena, the board or any party to the hearing may invoke the aid of a circuit court in requiring the attendance and testimony of witnesses. The circuit court within the jurisdiction of which the hearing is being held may issue an order requiring the person to appear before the board and give evidence touching the matter involved in the hearing. Failure to obey the order of the court may be punished by the court as a contempt.

• • •

(4) If the accused pleads guilty or is found guilty of any of the charges made, the board may revoke or suspend his license for a limited period or place the licensee on probation for a limited period.

(5) The findings of fact made by the board acting within its power, in the absence of fraud, are conclusive. The supreme

court may review questions of law involved in a final decision or determination of the board, if application is made by the aggrieved party within 30 days after the determination by certiorari, mandamus, or by any other method permissible under the rules and practice of the court or the laws of this state. The court may make further orders in respect thereto as justice may require. Pending the review by the supreme court, the action of the board shall be stayed.

MCLA 338.220

Sec. 20. Any person who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $500.00, or by imprisonment in the county jail for not more than 1 year, or by both such fine and imprisonment in the discretion of the court. After conviction of any violation of any of the provisions of this act, any person who shall again violate any provision of this act, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than $2,000.00, or by imprisonment in the state prison for not more than 2 years, or by both such fine and imprisonment in the discretion of the court.

Michigan Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCLA 24.201 et seq; MSA 3.560(101) et seq

MCLA 24.271

Sec. 71. (1) The parties in a contested case shall be given an opportunity for a hearing without undue delay.

(2) The parties shall be given a reasonable notice of the hearing, which notice shall include:

(a) A statement of the date, hour, place and nature of the hearing. Unless otherwise specified in the notice the hearing shall be held at the principal office of the agency.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is given, the initial notice may state the issues involved. Thereafter on application the agency or other party shall furnish a more definite and detailed statement on the issues.

MCLA 24.272(3) (4)

Sec. 72. • • •

(3) The parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact.

(4) A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. A party may submit rebuttal evidence.

MCLA 24.275

Sec. 75. In a contested case the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Ir-

relevant, immaterial or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law. Objections to offers of evidence may be made and shall be noted in the record. Subject to these requirements, an agency, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced thereby, may provide in a contested case or by rule for submission of all or part of the evidence in written form.

MCLA 24.276

Sec. 76. Evidence in a contested case, including records and documents in possession of an agency of which it desires to avail itself, shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under section 77. Documentary evidence may be received in the form of a copy or excerpt, if the original is not readily available, or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original when available.

MCLA 24.277

Sec. 77. An agency in a contested case may take official notice of judicially cognizable facts, and may take notice of general, technical or scientific facts within the agency's specialized knowledge. The agency shall notify parties at the earliest practicable time of any noticed fact which pertains to a material disputed issue which is being adjudicated, and on timely request the parties shall be given an opportunity before final decision to dispute the fact or its materiality. An agency may use its experience, technical competence and specialized knowledge in the evaluation of evidence presented to it.

MCLA 24.280

Sec. 80. A presiding officer may:

(a) Administer oaths and affirmations.

(b) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers and other documentary evidence.

(c) Provide for the taking of testimony by deposition.

(d) Regulate the course of the hearings, set the time and place for continued hearings and fix the time for filing of briefs and other documents.

(e) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties.

MCLA 24.282

Sec. 82. Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party

representative with professional training in accounting, actuarial science, economics, financial analysis or rate-making, in a contested case before the financial institutions bureau, the insurance bureau or the public service commission insofar as the case involves rate-making or financial practices or conditions.

MCLA 24.285

Sec. 85. A final decision or order of an agency in a contested case shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact which would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material and substantial evidence. A copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

MCLA 24.286

Sec. 86. (1) An agency shall prepare an official record of a hearing which shall include:

(a) Notices, pleadings, motions and intermediate rulings.

(b) Questions and offers of proof, objections and rulings thereon.

(c) Evidence presented.

(d) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose.

(e) Proposed findings and exceptions.

(f) Any decision, opinion, order or report by the officer presiding at the hearing and by the agency.

(2) Oral proceedings at which evidence is presented shall be recorded, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested except as otherwise provided by law.

MCLA 24.292

Sec. 92. Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license, an agency shall give notice, personally or by mail, to the licensee of facts or conduct which warrant the intended action. The licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license. If the agency finds that the public health, safety or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Michigan Administrative Code, 1970-1971 Annual Administrative Code Supplement, Rule 338.213

Rule 13. The Michigan state board of dentistry hereby recognizes the following branches of dentistry which will be referred to as specialists, namely: oral surgery, orthodontics, denture prosthesis, periodontics, endodontics and pedodontics.